

**Amendment and Response**

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Applicant(s): Marilyn J. ANDERSON et al.

Serial No.: 09/826,394

Filed: 03 April 2001

For: LOW POWER PORTABLE COMMUNICATION SYSTEM WITH WIRELESS RECEIVER AND METHODS REGARDING SAME

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**Remarks**

The Office Action mailed 25 April 2007 has been received and reviewed. Claims 45 and 50 have been amended. Claims 29-34 and 49 have been cancelled. No claims have been added. Therefore, the pending claims are claims 1-28, 35-48, and 50-78. Reconsideration and withdrawal of the rejections are respectfully requested in view of the amendments and remarks provided herein.

**Information Disclosure Statement**

Applicants have not received an initialed copy of the 1449 form submitted with the Information Disclosure Statement filed on November 9, 2004. A copy of the 1449 form and a copy of the Auto-Reply Facsimile Transmission confirmation sheet are enclosed as Exhibit A for the Examiner's convenience. Pursuant to the provisions of M.P.E.P. §609, Applicants request that a copy of the 1449 form, marked as being considered and initialed by the Examiner, be returned with the next Official Communication.

**Double Patenting Rejection**

Claim 61 was rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of U.S. Patent No. 7,095,981. Submitted herewith is a Terminal Disclaimer which, Applicants submit, is in compliance with 37 CFR 1.321(c) and thereby obviates the Examiner's double patenting rejection of pending claim 61.

**The 35 U.S.C. §112, Second Paragraph, Rejection**

The Examiner rejected claims 29-34 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicant respectfully traverses the Examiner's rejection of such claims. However, to move this case to issuance, Applicant has cancelled such claims, without prejudice, making this rejection moot.

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**The 35 U.S.C. §102 Rejection**

The Examiner rejected claims 75-77 under 35 U.S.C. §102 as being anticipated by Fazio (U.S. Patent No. 5,768,397). Applicants respectfully traverse the Examiner's rejection.

For a claim to be anticipated under 35 U.S.C. § 102(b), each and every element of the claim must be found in a single prior art reference. *See* M.P.E.P. § 2131.

Claim 75 describes a portable receiver apparatus that includes an ear retaining means for enclosing a speaker and configured for insertion in the concha of an ear of a user and a body portion means for enclosing at least demodulation means for converting one or more electrical signals representative of the detected infrared pulses to an audio signal to power the speaker to produce a sound output. The body portion means extends from a first end to a second end along a body portion axis (see, for example, Figure 21, body portion 922 extending along axis 923). The ear retaining means (see, for example, Figure 21, body portion 928 extending along axis 931) extends from the first end of the body portion along an axis of predominate sound direction of the speaker that is orthogonal to the body portion axis. Further, infrared light detection means is positioned at the second end of the body portion means.

Fazio does not describe each and every element of claim 75. Rather, Fazio shows two different hearing aid configurations in Figures 3 and 4. Neither of these two configurations shown in Fazio have a body portion and an ear retaining portion that lie along axes that are orthogonal to one another as described in claim 75. In fact, it appears that there is just a single body lying along a single axis in each configuration.

For at least this reason alone, claim 75 is not anticipated by Fazio. Further, claims 76-77 are dependent on claim 75 and include all the limitations thereof. As such, these claims are also not anticipated by Fazio for at least the same reasons as set forth for claim 75. It is respectfully requested that this rejection be withdrawn.

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**The 35 U.S.C. §103 Rejection**

The Examiner rejected claims 1-9, 14-21, 24-28, and 35-60 under 35 U.S.C. §103 as being unpatentable over Fazio in view of Julstrom et al. (U.S. Patent No. 6,694,034). Applicants respectfully traverse the Examiner's rejection.

To establish a *prima facie* case of obviousness, the prior art references must teach or suggest all the claim limitations. See M.P.E.P. § 2143.

As described below with respect to each of the independent claims 1, 17, 35, and 51, the references cited by the Examiner do not teach or suggest all the claim limitations of such independent claims. Therefore, such claims are not obvious in view of such references.

Further, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings of the cited references so as to arrive at the claimed invention. Particularly, there is nothing that would motivate one skilled in the art to modify Fazio so as to arrive at the present invention.

**Claims 1 and 35**

Claim 1 recites a portable communication system for use by a user with a communication apparatus having an audio port (e.g., a speaker/microphone jack). The system includes an infrared transmitter apparatus that includes at least one audio port configured to receive an audio signal representative of received audio input from the communication apparatus, at least one infrared light emitting device, modulation circuitry, and a microphone coupled to the at least one audio port of the infrared transmitter apparatus (see, for example, Figure 18B, microphone 823 which is a part of the transmitter apparatus 810 that is removably attached to the phone) and operable to generate an audio signal from received sound input of the user. The audio signal generated from received sound input of the user (e.g., someone talking hands-free in a car) is provided to the audio port of the communication apparatus via the audio port of the infrared transmitter apparatus (see, for example, Figure 18B and description thereof, wherein microphone

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823 provides signal to audio port 851 of the transmitter apparatus 810 for communication to audio port 850 of the phone). A transmitter housing is provided that encloses the modulation circuitry and the microphone (see, for example, Figure 18B, wherein microphone 823 is enclosed in the transmitter housing 819) and upon which the at least one infrared light emitting device is mounted, and further that is configured to be removably coupled to the communication apparatus.

Claim 35 includes similar components, but is not limited to infrared components.

The references cited do not teach or suggest all the limitations recited in claims 1 and 35. For example, Fazio does not teach or suggest a microphone coupled to the at least one audio port of the transmitter apparatus (e.g., operable to generate an audio signal from received sound input of the user). Further, Fazio does not describe that the audio signal generated from received sound input of the user (e.g., someone talking hands-free in a car) is provided to the audio port of the communication apparatus via the audio port of the transmitter apparatus. Yet further, Fazio does not teach or suggest a transmitter housing that encloses the modulation circuitry and the microphone and which is configured to be removably coupled to the communication apparatus.

The Examiner alleges that Fazio shows a "microphone (4)" that is configured like that described in claim 1 and claim 35 (see Office Action, page 8 and 13). However, microphone (4) of Fazio is the microphone of the cellular phone and not a part of the transmitter apparatus shown generally in Figure 2 of Fazio. The only other microphone mentioned in Fazio is microphone 22 which is a part of the hearing aid shown in Figure 3 and Figure 4. As such, microphone 4 and 22 are not coupled to the at least one audio port of the infrared transmitter apparatus and the audio signal generated from received sound input of the user is not provided to the audio port of the communication apparatus via the audio port of the infrared transmitter apparatus.

In other words, there is no microphone of Fazio that is in the infrared transmitter apparatus (e.g., transmitter 10 of Fazio) and as such, there is no communication from the microphone to the audio port of the transmitter apparatus to the audio port of the communication

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apparatus to which it is coupled. The most that Fazio teaches is a microphone of a cell phone or a microphone that is part of a hearing aid. Fazio does not teach or suggest the use of a microphone in a transmitter apparatus that is removably coupled to the communication apparatus as described according to claim 1. Likewise, there is no amplification for such a microphone in the transmitter apparatus as described in claim 2 and 36.

Julstrom et al. does nothing to cure the lack of teaching or suggestion of the elements missing in Fazio.

Further, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings to arrive at the claimed invention. Particularly, there is nothing that would motivate one skilled in the art to modify Fazio so as to arrive at the present invention described in claims 1 and 35.

For at least the above reasons, claims 1 and 35 are not obvious in view of the cited references. Further, as claims 2-9, 14-16, and 36-44 depend on respective independent claims 1 and 35, either directly or indirectly, they include the limitations thereof. As such, these claims are also not obvious over the cited references for the same reasons as provided above and by reason of their own limitations. It is respectfully requested that this rejection be withdrawn.

Claims 17 and 51

Claim 17 recites a transmitter apparatus for use by a user with a communication apparatus (e.g., a phone) having an audio port. The apparatus includes at least one audio port configured to receive an audio signal representative of received audio input from the communication apparatus, modulation circuitry, and a microphone coupled to the at least one audio port of the transmitter apparatus and operable to generate an audio signal from received sound input of the user. The audio signal generated from received sound input of the user is provided to the audio port of the communication apparatus via the audio port of the transmitter apparatus. Further, the apparatus includes a transmitter housing enclosing the modulation

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circuitry and the microphone. The transmitter housing is of a size smaller than the communication apparatus and configured to be removably coupled onto the communication apparatus.

Claim 51 includes similar components, but does not include infrared limitations.

The references cited do not teach or suggest all the limitations recited in claims 17 and 51. For example, as described above with reference to claims 1 and 35, Fazio does not teach or suggest a microphone coupled to the at least one audio port of the transmitter apparatus (e.g., operable to generate an audio signal from received sound input of the user). Further, Fazio does not describe that the audio signal generated from received sound input of the user (e.g., someone talking hands-free in a car) is provided to the audio port of the communication apparatus via the audio port of the transmitter apparatus. Yet further, Fazio does not teach or suggest a transmitter housing that encloses the modulation circuitry and the microphone and which is configured to be removably coupled to the communication apparatus.

For at least the above reasons, claims 17 and 51 are not obvious in view of the cited references. Further, as claims 18-21, 24-28, and 52-60 depend on respective independent claims 17 and 51, either directly or indirectly, they include the limitations thereof. As such, these claims are also not obvious over the cited references for the same reasons as provided above and by reason of their own limitations. It is respectfully requested that this rejection be withdrawn.

**Claim 78**

The Examiner also rejected claim 78 as being obvious in view of claim 75. Claim 78 is dependent on claim 75 and includes all the limitations thereof. As such, Fazio does not teach or suggest all the limitations of this claim for the same reasons as described above with reference to the anticipation rejection of claim 75. Therefore, claim 78 is not obvious in view of Fazio for such reasons and by reason of its own limitations. It is respectfully requested that this rejection be withdrawn.

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**Allowable Subject Matter**

Applicants acknowledge the allowance of claims 61-74.

Applicants further acknowledge that claims 10-13, 22-23, 49-50, and 55-56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 49 and 50 have been rewritten in independent form. For example, claim 49 was included in original claim 45 (and claim 49 was cancelled) and claim 50 was written to include the limitations of claim 45. As such, it is believed that these claims are in condition for allowance.

However, Applicants at this time have not rewritten claims 10-13, 22-23, and 55-56 in independent form as it is believed that such claims are dependent from claims that are in allowable form.

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METHODS REGARDING SAME**Summary**

It is respectfully submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

Mueeting, Raasch &amp; Gebhardt, P.A.

P.O. Box 581415

Minneapolis, MN 55458-1415

Phone: (612) 305-1220

Facsimile: (612) 305-1228

Customer Number 26813

25 Oct 2007

Date

By: 

Mark J. Gebhardt

Reg. No. 35,518

Direct Dial (612) 305-1216

**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 25th day of October, 2007, at 4:20pm (Central Time).

By: 

Name: Deb Schurmann